

A.M. No. 10-9-15-SC Re: Request of (ret.) Chief Justice Artemio V. Panganiban for Re-Computation of His Creditable Service for the Purpose of Re-Computing His Retirement Benefits.

Promulgated:

FEBRUARY 12, 2013

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DISSENTING OPINION

LEONARDO-DE CASTRO, J.:

In light of the ruling in the majority opinion that consultancy services rendered to the government partake of the nature of “government service” which can be credited in the availment of retirement benefits by public officers under the law, should the Civil Service Commission, the Government Service Insurance System, the Office of the Ombudsman, and all concerned government agencies now include within the coverage of their authority and jurisdiction all consultants presently rendering service to the government?

Conversely, is the ruling of the majority intended to apply only to former Chief Justice Artemio V. Panganiban who, because of his consultancy services in the practice of his profession to the former Secretary of Education from January 1962 to December 1965 (exact dates not specified), will now be entitled, among others, to the lifetime monthly pension of the Members of the Judiciary at the rate equal to the salary of the incumbent Chief Justice? Or will this apply as well only to the Members of this Court similarly situated as the former Chief Justice who may have previously rendered consultancy services to the government? If so, how can the Court countenance or justify such an uneven application of the law?

These are nagging questions engendered by the ruling of the majority which overturned all settled legal principles and doctrines on the nature and character of consultancy services rendered to the government.

First off, the Constitution requires public officials and employees to take an oath of office. Specifically, Article IX(B) of the Constitution provides:

Sec. 4. All public officers and employees shall take an oath or affirmation to uphold and defend this Constitution.

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The Administrative Code of 1987 (Executive Order No. 292) implements this constitutional provision as follows:

Chapter 10 – OFFICIAL OATHS

Sec. 40. *Oaths of Office for Public Officers and Employees.* – All public officers and employees of the government including every member of the armed forces shall, before entering upon the discharge of his duties, take an oath or affirmation to uphold and defend the Constitution; that he will bear true faith and allegiance to it; obey the laws, legal orders and decrees promulgated by the duly constituted authorities; will well and faithfully discharge to the best of his ability the duties of the office or position upon which he is about to enter; and that he voluntarily assumes the obligation imposed by his oath of office without mental reservation or purpose of evasion. Copies of the oath shall be deposited with the Civil Service Commission and the National Archives. (Book I.)

All public officers and employees from the highest to the lowest are required to take an oath of office which marks their assumption to duty. Notably, even the Court's appointed utility personnel are required to take the oath of office mandated by the Constitution and the law.

To be sure, since it is long settled that not all services rendered to the government partake of the nature of "government service," consultants are not required to take an oath of office because they are not rendering "government service" in the sense the term is understood for purposes of applying the laws and regulations applicable to public officers and employees, among which are the retirement laws, the Anti-Graft and Corrupt Practices Act (Republic Act No. 3019 as amended), and the Code of Conduct and Ethical Standards for Public Officials and Employees (Republic Act No. 6713). Consultants can engage in the practice of their profession like former Chief Justice Panganiban who admitted in his personal data sheet submitted to the Court that he was a practicing lawyer as Senior Partner of PABLAW during the period for which he was deemed by the majority opinion to have rendered "government service."

One who does not take an oath of office which demands the highest standard and responsibilities of public service is understandably not entitled to enjoy the benefits and privileges of a public officer or employee. It is well-settled that an oath of office is a qualifying requirement for public office, a prerequisite to the full investiture of the office.¹

Hence, it is erroneous to consider all services rendered for the government as government service which can be credited to claim retirement benefits, particularly if the service is rendered not by virtue of an appointment or election to a specific public office or position, which requires the taking of an oath of office, but by a contractual engagement like that of a consultant.

¹ *Lecaroz v. Sandiganbayan*, 364 Phil. 890, 904 (1999); *Mendoza v. Laxina, Sr.*, 453 Phil. 1013, 1026-1027 (2003); *Chavez v. Ronidel*, G.R. No. 180941, June 11, 2009, 589 SCRA 103, 109.


It should be stressed that the Certification of the late former Secretary of Education Alejandro R. Roces did not state to what position former Chief Justice Artemio Panganiban was appointed. He stated that the latter was “appointed” to render service. Such loose statement cannot suffice as numerous consultants are rendering service to the government pursuant to a contract of service which is not considered creditable government service under our retirement laws.

Unlike the case of former Chief Justice Panganiban, the cited precedents in the *ponencia* of Justice Estela Perlas-Bernabe identified the positions, designated by law or administrative/executive orders, to which the former Justices were appointed. The situation of former Chief Justice Panganiban is markedly different from the precedents cited by Justice Bernabe considering the presence of evidentiary support extant on record that showed incontrovertibly the appointment of former Chief Justice Andres Narvasa and Justice Abraham Sarmiento to specific positions in government.

The legal and factual issues regarding one’s entitlement to retirement benefits must be carefully considered because such benefits are accorded by law to public officers and employees who have assumed the concomitant responsibilities and obligations demanded by their oath of office during the mandatory period of time explicitly prescribed by the applicable retirement law.

The ruling of the majority, having set a precedent, may have now opened a Pandora’s box of claims for retirement benefits previously denied because prior to the ruling of the majority in this case, consultancy services rendered to the government have consistently not been credited as part of government service. The Court will be hard put to take the position that its ruling applies only to former Chief Justice Panganiban and to the Members of this Court who may invoke this ruling in the future due to their having previously rendered similar services to the government.

In view of the foregoing, I join the dissent of Justice Arturo D. Brion who has meticulously and astutely discussed the factual and legal issues in this administrative matter.


TERESITA J. LEONARDO-DE CASTRO
Associate Justice